

**CHAPTER 81-03-02.2**  
**INCOME TAX ON NONRESIDENT INDIVIDUALS, ESTATES, TRUSTS, AND**  
**FIDUCIARIES**

Section

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**81-03-02.2-01. Nonresident filing status and reporting of income.**

1. A nonresident individual who moves into this state with the intent to establish permanent residence acquires status as a resident immediately upon entering this state. That individual may file an individual income tax return for the first tax year either as a resident or as a nonresident.
2. An individual who elects to file an individual income tax return as a resident the first tax year in this state must report to this state total income from all sources for the entire year and must pay taxes on that income. That individual is entitled to a tax credit for taxes paid to another state on any portion of that income.
3. An individual who elects to file an individual income tax return as a nonresident the first tax year in this state must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.
4. If a resident individual moves out of this state during a tax year with the intent to change residency, that individual must file an individual income tax return as a nonresident and must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.
5. This rule is effective for taxable years beginning before January 1, 2001.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04

**81-03-02.2-01.1. Part-year resident filing status and reporting of income.**

1. An individual who moves into this state during the tax year with the intent to establish permanent residence acquires status as a resident immediately upon entering this state. That individual must file an individual income tax return for the first tax year as a part-year resident.
2. An individual who moves out of this state during the tax year with the intent to change residency must file an individual income tax return for that year as a part-year resident.
3. An individual, who files an individual income tax return as a part-year resident, must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from sources in this state must also be reported to this state for the portion of the year the individual was not a resident. The individual is entitled to a tax credit for taxes paid to another state on any portion of the income reported to this state.
4. This rule is effective for taxable years beginning after December 31, 2000.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04

**81-03-02.2-02. Income of nonresident from tangible property located in North Dakota.** A nonresident must report to this state income from tangible property located in this state and must pay North Dakota tax on that income. Such income may not be excluded by a reciprocal agreement or for any other reason unless specifically excluded by statute.

Income from tangible property located in this state includes, but is not limited to, income from royalty interests and all other lease interests in minerals, income from rental of tangible property, gains from sales of tangible property, and gains from the sale or assignment of land contracts.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04, 57-38.1-04, 57-38.1-05, 57-38.1-06

**81-03-02.2-03. Computation of North Dakota income tax liability by a nonresident individual, estate, or trust electing to file under North Dakota Century Code section 57-38-30.3.**

1. Subsection 10 of North Dakota Century Code section 57-38-30.3 provides for the recomputation of the federal income tax liability by nonresident individuals, estates, or trusts to prevent any income

from becoming exempt from taxation because of the provisions of North Dakota Century Code section 57-38-30.3 if that income would otherwise have been subject to taxation under the provisions of North Dakota Century Code chapter 57-38. Therefore, a nonresident individual, estate, or trust that files under North Dakota Century Code section 57-38-30.3 and that has out-of-state losses that exceed out-of-state income must make a separate computation to determine a recomputed federal income tax liability.

This computation consists of adding out-of-state losses that exceed out-of-state income to federal adjusted gross income and then using this figure to determine a recomputed federal income tax liability. A schedule prescribed by the tax commissioner must be used to determine the recomputed federal income tax liability. The recomputed income tax liability is the amount that must be used to compute the North Dakota income tax liability.

2. This rule is effective for taxable years beginning before January 1, 2001.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-30.3

**81-03-02.2-04. Deduction for federal income tax liability - Limitation.** In determining the North Dakota taxable income of a nonresident, the deduction for the federal income tax liability must be adjusted as follows:

1. The federal foreign income tax credit must be subtracted.
2. After subtracting the federal foreign income tax credit, the result must be multiplied by a fraction in which the numerator is the amount of the federal adjusted gross income allocated and apportioned to North Dakota reduced by the amount of income that is excludable from North Dakota taxable income due to North Dakota statutes, federal statutes, or constitutional provisions, and the denominator is federal adjusted gross income.

**History:** Effective May 1, 1991.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.2, 57-38-06